

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

BILLI JO H.,

Plaintiff,

1

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

CASE NO. 3:20-CV-5130-DWC

## ORDER

## I. INTRODUCTION

17 Plaintiff filed this action, pursuant to 42 U.S.C. § 405(g), for judicial review of the  
18 Commissioner of Social Security’s (“Commissioner”) denial of Plaintiff’s applications for  
19 disability insurance and social security income benefits. Pursuant to 28 U.S.C. § 636(c), Federal  
20 Rule of Civil Procedure 73 and Local Rule MJR 13, the parties have consented to have this  
21 matter heard by the undersigned Magistrate Judge. *See* Dkt. 2.

22 After considering the record, the Court concludes the Administrative Law Judge  
23 (“ALJ”) erred by rejecting Plaintiff’s testimony regarding the severity of some of her symptoms,  
24 the opinions of treating psychologist Karen Hye, Psy.D., and the opinions of treating doctor

1 | Christine Macatuno, M.D. Accordingly, this matter is reversed and remanded pursuant to  
2 | sentence four of 42 U.S.C. § 405(g) to the Commissioner for further proceedings consistent with  
3 | this Order.

## II. FACTUAL AND PROCEDURAL HISTORY

5 Plaintiff applied for disability insurance and supplemental security income benefits in  
6 August 2017, alleging disability as of June 30, 2015. *See* Dkt. 14, Admin. Record (“AR”), 65–  
7 66, 79–80, 201–02. The applications were denied on initial administrative review, and on  
8 reconsideration. *See* AR 63–122. A hearing was held before ALJ Lawrence Lee on December  
9 13, 2018. *See* AR 996–1033. In a decision dated January 18, 2019, ALJ Lee determined Plaintiff  
10 to be not disabled. *See* AR 25–39. The Appeals Council denied review. *See* AR 1–4.

### III. STANDARD OF REVIEW

12 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of  
13 social security benefits if the ALJ's findings are based on legal error or not supported by  
14 substantial evidence in the record as a whole. *Ford v. Saul*, 950 F.3d 1141, 1153–54 (9th Cir.  
15 2020) (citing *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008)).

#### IV. DISCUSSION

## A. Whether the ALJ Reasonably Discounted Plaintiff's Testimony

18 Plaintiff contends the ALJ failed to give clear and convincing reasons for discounting  
19 Plaintiff's symptom testimony. *See* Dkt. 15, pp. 9–16. Plaintiff testified she had back surgery in  
20 2013, which stabilized her spine but did not improve nerve pain in her legs. AR 1004–05. She  
21 reported she cannot sit or stand for more than 10–15 minutes at a time, or walk for more than a  
22 few minutes. AR 257, 262. She testified she had migraines, which improved with Botox  
23 treatment, but she still gets 10–15 per month. *See* AR 257, 266, 1006. She testified she can

1 handle most of her personal care, but needs help drying her hair. *See* AR 258, 264, 1007.  
2 Plaintiff testified she has difficulty leaving her home, spending most of her time alone or with  
3 family that lives with her. *See* AR 257, 264, 1011, 1015. She testified she has to self-catheterize  
4 when going to the bathroom, which she does five to six times per day. AR 1020. She testified it  
5 takes ten minutes each time. AR 1021. Plaintiff testified she has trouble eating in public due to  
6 gastroparesis, which can cause her to vomit in the middle of a meal. AR 1022. Plaintiff testified  
7 she has trouble concentrating and remembering. AR 260, 262, 1024–25.

8 The Ninth Circuit has “established a two-step analysis for determining the extent to  
9 which a claimant’s symptom testimony must be credited.” *Trevizo v. Berryhill*, 871 F.3d 664,  
10 678 (9th Cir. 2017). The ALJ must first determine whether the claimant has presented objective  
11 medical evidence of an impairment that ““could reasonably be expected to produce the pain or  
12 other symptoms alleged.”” *Id.* (quoting *Garrison v. Colvin*, 759 F.3d 995, 1014–15 (9th Cir.  
13 2014)). At this stage, the claimant need only show the impairment could reasonably have caused  
14 some degree of the symptoms; she does not have to show the impairment could reasonably be  
15 expected to cause the severity of the symptoms alleged. *Id.* The ALJ found Plaintiff met this first  
16 step. *See* AR 31.

17 If the claimant satisfies the first step, and there is no evidence of malingering, the ALJ  
18 may only reject the claimant’s testimony ““by offering specific, clear and convincing reasons for  
19 doing so. This is not an easy requirement to meet.”” *Trevizo*, 871 F.3d at 678 (quoting *Garrison*,  
20 759 F.3d at 1014–15). In evaluating the ALJ’s determination at this step, the Court may not  
21 substitute its judgment for that of the ALJ. *Fair v. Bowen*, 885 F.2d 597, 604 (9th Cir. 1989). As  
22 long as the ALJ’s decision is supported by substantial evidence, it should stand, even if some of  
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1 the ALJ's reasons for discrediting a claimant's testimony fail. *See Tonapetyan v. Halter*, 242  
 2 F.3d 1144, 1148 (9th Cir. 2001).

3 The ALJ rejected Plaintiff's testimony regarding the severity of her impairments. *See AR*  
 4 31–32. The ALJ separately analyzed Plaintiff's testimony regarding her bladder issues,  
 5 gastroparesis, fibromyalgia and musculoskeletal issues, migraines, right shoulder pain, and  
 6 mental impairments. *See AR* 32–35. The Court will follow suit and separately address the ALJ's  
 7 analysis of each symptom source.

8 1. The ALJ Erred in Rejecting Plaintiff's Testimony Regarding Bladder Issues

9 The ALJ erred in rejecting Plaintiff's testimony regarding the severity of her bladder  
 10 symptoms. An ALJ may reject a claimant's symptom testimony when it is contradicted by the  
 11 medical evidence. *See Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir.  
 12 2008) (citing *Johnson v. Shalala*, 60 F.3d 1428, 1434 (9th Cir.1995)). But the ALJ must explain  
 13 how the medical evidence contradicts the claimant's testimony. *See Dodrill v. Shalala*, 12 F.3d  
 14 915, 918 (9th Cir. 1993). The ALJ summarized the medical evidence and noted Plaintiff was able  
 15 to independently self-catheterize. *See AR* 32. But the ALJ did not explain with specificity how  
 16 any of this was inconsistent with Plaintiff's testimony. *See id.* The ALJ therefore erred. *See*  
 17 *Brown-Hunter v. Colvin*, 806 F.3d 487, 494 (9th Cir. 2015) (finding error where the ALJ did not  
 18 identify specific inconsistencies but “simply stated her non-credibility conclusion and then  
 19 summarized the medical evidence supporting her RFC determination”).

20 2. The ALJ Erred in Rejecting Plaintiff's Testimony Regarding Gastroparesis

21 The ALJ similarly erred in rejecting Plaintiff's testimony regarding the severity of her  
 22 symptoms from gastroparesis. The ALJ noted Plaintiff takes medication for this condition, and  
 23 has maintained a relatively stable weight. *See AR* 32. But that evidence does not contradict

1 Plaintiff's testimony that she may have to vomit in the middle of eating a meal. The record does  
 2 not establish clear work limitations from this condition, but the ALJ failed to adequately address  
 3 Plaintiff's testimony, and thus erred.

4       3.       The ALJ Erred in Rejecting Plaintiff's Testimony Regarding Fibromyalgia and  
Musculoskeletal Issues

5       The ALJ erred in rejecting Plaintiff's testimony regarding the severity of her symptoms  
 6 from fibromyalgia and musculoskeletal issues. Fibromyalgia is an "unusual" disease for which  
 7 "there is an absence of symptoms that a lay person may ordinarily associate with joint and  
 8 muscle pain. The condition is diagnosed entirely on the basis of the patients' reports of pain and  
 9 other symptoms." *Revels v. Berryhill*, 874 F.3d 648, 656 (9th Cir. 2017) (internal citations and  
 10 quotation marks omitted). The ALJ here noted Plaintiff had normal findings such as muscle bulk  
 11 and tone, gait, coordination, and sensation. *See* AR 33. These finding are not inconsistent with  
 12 fibromyalgia, nor is the record as uniform as the ALJ suggested. The records to which the ALJ  
 13 cited note tenderness to palpation and difficulty with tandem gait, findings more relevant to  
 14 Plaintiff's claimed symptoms than findings such as normal muscle tone. *See e.g.*, AR 531, 566,  
 15 607, 616, 654. The ALJ is responsible for resolving conflicts in the medical evidence, but must  
 16 consider specific findings in the broader context "with an understanding of the patient's overall  
 17 well-being and the nature of her symptoms." *Attmore v. Colvin*, 827 F.3d 872, 877 (9th Cir.  
 18 2016). The ALJ failed to adequately explain how he did so here, and erred in rejecting Plaintiff's  
 19 fibromyalgia and musculoskeletal symptom testimony as inconsistent with the medical evidence.  
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21       The ALJ also noted Plaintiff had "multiple abnormal drug screens, which were negative  
 22 for prescribed medications and/or positive for oxycodone." AR 33. The ALJ did not make any  
 23 conclusions regarding these facts, though, and thus did not provide a clear and convincing reason  
 24 to reject Plaintiff's symptom testimony here.

1       4.       The ALJ Did Not Err in Rejecting Plaintiff's Testimony Regarding Migraines

2       The ALJ did not err in rejecting Plaintiff's testimony regarding the severity of her  
 3 symptoms from migraines. Contrary to Plaintiff's testimony, the medical evidence to which the  
 4 ALJ cited indicates Plaintiff's migraine symptoms improved significantly with treatment. *See*  
 5 AR 33. In particular, providers noted Plaintiff had a 50 percent reduction in frequency and  
 6 severity of her migraines after Botox injections, decreasing from more than 15 per month down  
 7 to around three per month at half the pain intensity. *See* AR 957, 982. This evidence contradicts  
 8 Plaintiff's testimony that she gets 10–15 migraines even after Botox treatment, so the ALJ did  
 9 not err in rejecting Plaintiff's testimony regarding the severity and frequency of her migraines.

10       5.       The ALJ Erred in Rejecting Plaintiff's Testimony Regarding Right Shoulder Pain

11       The ALJ erred in rejecting Plaintiff's testimony regarding her right shoulder symptoms.  
 12 The ALJ summarized several medical records, but did not explain how those contradicted  
 13 Plaintiff's testimony. *See* AR 33. Nor is any contradiction obvious on examination of the records  
 14 to which the ALJ cited, as those records generally document tenderness, decreased range of  
 15 motion, and test results indicative of shoulder problems. *See* AR 929, 969. The ALJ thus erred in  
 16 rejecting Plaintiff's right shoulder symptom testimony.

17       6.       The ALJ Erred in Rejecting Plaintiff's Testimony Regarding Mental Impairments

18       The ALJ erred in rejecting Plaintiff's testimony regarding the severity of her mental  
 19 impairments. The ALJ reasoned Plaintiff did not seek mental health therapy until early 2017, and  
 20 "treatment records do not document further therapy appointments/evaluations after late 2017."  
 21 AR 34. However, as Defendant concedes, Plaintiff's psychologist, Dr. Hye, submitted a letter to  
 22 the Appeals Council stating she saw Plaintiff 40 times between June 1, 2017, and April 19, 2019.  
 23 *See* AR 10. When additional evidence is submitted for the first time to the Appeals Council, the  
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1 Court must consider whether the ALJ's decision remains supported by substantial evidence in  
 2 light of the new evidence. *See Brewes v. Comm'r of Soc. Sec. Admin.*, 682 F.3d 1157, 1163 (9th  
 3 Cir. 2012). Dr. Hye's letter undermines the ALJ's finding that Plaintiff did not receive additional  
 4 treatment for her mental impairments, and thus the ALJ erred in rejecting Plaintiff's testimony  
 5 based on that finding.

6 Although the ALJ pointed to other medical evidence to suggest Plaintiff's symptoms  
 7 were not as severe as alleged, the fact that he did not have documentation of treatment notes  
 8 from at least 40 visits indicates he did not have the full picture of Plaintiff's condition. The ALJ  
 9 must consider the entirety of Plaintiff's condition when evaluating the medical evidence, and he  
 10 did not have adequate information to do that here. *See Attmore*, 827 F.3d at 877. The ALJ thus  
 11 erred in rejecting Plaintiff's mental symptom testimony as inconsistent with the medical  
 12 evidence.

13 The ALJ also erred in rejecting Plaintiff's testimony regarding the severity of her mental  
 14 impairments as inconsistent with her traveling to California for a funeral. An ALJ may reject a  
 15 plaintiff's symptom testimony based on her daily activities if they contradict her testimony or  
 16 "meet the threshold for transferable work skills." *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir.  
 17 2007) (citing *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989)). The ALJ reasoned Plaintiff  
 18 "testified that she flew alone to Los Angeles, California for 10 days where she was dropped off  
 19 and picked up by family members, indicating she is able to move about outside the house and get  
 20 tasks done when necessary." AR 35. That Plaintiff flew to a funeral on a single occasion and  
 21 interacted with family members does not contradict her testimony that she had difficulty leaving  
 22 her house and spent most of her time alone or with other family members. "One does not need to  
 23 be 'utterly incapacitated' in order to be disabled." *Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th  
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1 Cir. 2001) (quoting *Fair*, 885 F.2d at 603). The ALJ failed to show a clear conflict between  
 2 Plaintiff's testimony and her activities, and thus erred in rejecting Plaintiff's testimony regarding  
 3 the severity of her mental health symptoms.

4 In sum, the ALJ failed to give clear and convincing reasons to reject Plaintiff's testimony  
 5 regarding the severity of her symptoms from bladder issues, gastroparesis, fibromyalgia and  
 6 musculoskeletal issues, right shoulder issues, and mental impairments. The ALJ gave adequate  
 7 reasons for rejecting Plaintiff's testimony regarding the severity of her migraine symptoms.

8 **B. Whether the ALJ Reasonably Evaluated the Medical Evidence**

9 Plaintiff contends the ALJ erred by rejecting the opinions of treating providers Dr. Hye  
 10 and Dr. Macatuno. *See* Dkt. 15, pp. 2–13. The regulations regarding evaluation of medical  
 11 evidence have been amended for claims protectively filed after March 27, 2017. 20 C.F.R. §§  
 12 404.1520c(c), 416.920c(c). As Plaintiff filed her claims in August 2017, the new regulations apply  
 13 to Plaintiff's claims. *See* AR 65, 79, 201–02.

14 The new regulations state the Commissioner “will no longer give any specific evidentiary  
 15 weight to medical opinions; this includes giving controlling weight to any medical opinion.”  
 16 Revisions to Rules Regarding the Evaluation of Medical Evidence (“Revisions to Rules”), 82  
 17 Fed. Reg. 5844, 5867–68 (Jan. 18, 2017); *see also* 20 C.F.R. §§ 404.1520c(a), 416.920c(a).  
 18 Instead, the Commissioner must consider all medical opinions and “evaluate their  
 19 persuasiveness” based on supportability, consistency, relationship with the claimant,  
 20 specialization, and other factors. 20 C.F.R. §§ 404.1520c(c), 416.920c(c). Supportability and  
 21 consistency are the key factors. 20 C.F.R. §§ 404.1520c(a), (b)(2), 416.920c(a), (b)(2).

22 Although the regulations eliminate the “physician hierarchy,” deference to specific  
 23 medical opinions, and assigning “weight” to a medical opinion, the ALJ must still “articulate  
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1 how [he/she] considered the medical opinions” and “how persuasive [he/she] find[s] all of the  
 2 medical opinions.” 20 C.F.R. §§ 404.1520c(a), (b)(1), 416.920c(a), (b)(1). The ALJ is  
 3 specifically required to “explain how [he/she] considered the supportability and consistency  
 4 factors” for a medical opinion. 20 C.F.R. §§ 404.1520c(b)(2), 416.920c(b)(2).

5 The parties dispute whether current Ninth Circuit law applies to claims filed after March  
 6 27, 2017, given the new regulations. *See* Dkt. 15, 18–19. The Ninth Circuit currently requires the  
 7 ALJ to provide “clear and convincing” reasons for rejecting the uncontradicted opinion of either  
 8 a treating or examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996) (citing  
 9 *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir. 1988); *Pitzer v. Sullivan*, 908 F.2d 502, 506 (9th  
 10 Cir. 1990)). When a treating or examining physician’s opinion is contradicted, the Ninth Circuit  
 11 has held the medical opinion can be rejected “for specific and legitimate reasons that are  
 12 supported by substantial evidence in the record.” *Lester*, 81 F.3d at 830–31 (citing *Andrews v.*  
 13 *Shalala*, 53 F.3d 1035, 1043 (9th Cir. 1995); *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir.  
 14 1983)).

15 At this time, the Ninth Circuit has not issued a decision stating whether it will continue to  
 16 require, in the absence of a hierarchy, an ALJ to provide “clear and convincing” or “specific and  
 17 legitimate reasons,” or some variation of those standards, when analyzing medical opinions.  
 18 Regardless, it is not clear the Court’s consideration of the adequacy of an ALJ’s reasoning under  
 19 the new regulations differs from the current Ninth Circuit standards in any significant respect.  
 20 The new regulations require the ALJ to articulate how persuasive the ALJ finds medical opinions  
 21 and to explain how the ALJ considered the supportability and consistency factors. 20 C.F.R. §§  
 22 404.1520c(a), (b), 416.920c(a), (b). This appears, at the least, to require an ALJ to specifically  
 23 account for the legitimate factors of supportability and consistency in addressing the  
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1 persuasiveness of a medical opinion. Furthermore, the Court must continue to consider whether  
 2 the ALJ's decision is supported by substantial evidence. *See* Revisions to Rules, 82 Fed. Reg.  
 3 5844, at 5852 ("Courts reviewing claims under our current rules have focused more on whether  
 4 we sufficiently articulated the weight we gave treating source opinions, rather than on whether  
 5 substantial evidence supports our final decision.").

6 Consistent with the above considerations, this Court will apply the new regulations,  
 7 consistent with Ninth Circuit law, in determining whether the ALJ's decision is free of legal  
 8 error and supported by substantial evidence.

9       1.     The ALJ Erred in Rejecting Dr. Hye's Opinions

10       Dr. Hye was Plaintiff's treating psychologist. *See* AR 841–53. Dr. Hye drafted a letter,  
 11 dated December 7, 2017, outlining Plaintiff's conditions. *See* AR 843–44. Dr. Hye noted  
 12 Plaintiff reported significant physical symptoms, which manifested in her inability to sit still for  
 13 long periods during counseling sessions. AR 843. Dr. Hye stated Plaintiff "reports and  
 14 demonstrates issues with confusion." *Id.* Dr. Hye noted Plaintiff has issues with attention,  
 15 concentration, and memory. *Id.* She noted Plaintiff has trouble leaving her house due to  
 16 agoraphobia and fear of panic attacks. AR 844.

17       Dr. Hye also completed a medical source statement. *See* AR 845–47. She opined Plaintiff  
 18 had limitations in multiple areas of understanding and memory, and sustained concentration and  
 19 persistence. AR 845. Dr. Hye opined Plaintiff had little to no limitations in social interaction, but  
 20 mild to marked limitations in adaptation. AR 846.

21       Dr. Hye completed a form in October 2018 stating Plaintiff's symptoms remained  
 22 unchanged despite her trial on a new medication. AR 841–42.

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1       The ALJ found Dr. Hye's opinions not persuasive. AR 36. The ALJ reasoned Dr. Hye's  
 2 opinions were undermined by the fact she only saw Plaintiff for limited follow-up mental health  
 3 treatment. *Id.* The ALJ reasoned Dr. Hye's opinions were inconsistent with the overall medical  
 4 record and that Dr. Hye relied too heavily on Plaintiff's self-reports. *Id.*

5       The ALJ erred in rejecting Dr. Hye's opinions. As discussed above, the ALJ's finding  
 6 that Plaintiff received only limited follow-up treatment was undermined by Dr. Hye's letter to  
 7 the Appeals Council. *See* AR 10. That letter also undermined the ALJ's finding that Dr. Hye's  
 8 opinions were inconsistent with the medical evidence because the ALJ did not have a full picture  
 9 of Plaintiff's medical records on which he could reasonably reach that conclusion.

10       Because the ALJ did not have the full picture of the medical evidence, his finding that Dr.  
 11 Hye relied heavily on Plaintiff's self-reports—rather than the medical evidence—is also not  
 12 supported by substantial evidence. An ALJ may reject a treating doctor's opinions if they "are  
 13 based 'to a large extent' on an applicant's self-reports and not on clinical evidence." *Ghanim v.*  
 14 *Colvin*, 763 F.3d 1154, 1162 (9th Cir. 2014) (quoting *Tommasetti*, 533 F.3d at 1041). "However,  
 15 when an opinion is not more heavily based on a patient's self-reports than on clinical  
 16 observations, there is no evidentiary basis for rejecting the opinion." *Ghanim*, 763 F.3d at 1162  
 17 (citing *Ryan v. Comm'r of Soc. Sec.*, 528 F.3d 1194, 1199–1200 (9th Cir. 2008)). Because the  
 18 ALJ failed to adequately address the medical evidence, the Court cannot determine whether the  
 19 ALJ reasonably found Dr. Hye relied on Plaintiff's self-reports over the medical evidence. The  
 20 ALJ therefore harmfully erred in rejecting Dr. Hye's opinions.

21           2.       The ALJ Erred in Rejecting Dr. Macatuno's Opinions

22       Dr. Macatuno was Plaintiff's primary care provider. *See* AR 630–34, 637–41, 650–55,  
 23 682–87, 692–97, 716–21, 723–28, 765–69, 805–14, 926–30, 938–42, 953–57. Dr. Macatuno

1 cosigned an opinion report from Alika Antone, D.P.T., Plaintiff's physical therapist. *See* AR  
 2 854–61; *see also* AR 862–69. Ms. Antone opined Plaintiff could lift 10 pounds for up to one  
 3 third of an eight-hour workday, and less than 10 pounds for one third to two thirds of the day.  
 4 AR 855. Ms. Antone opined Plaintiff could stand and walk for one hour in an eight-hour  
 5 workday. *Id.* She opined Plaintiff could sit for a total of four hours, but needed to alternate  
 6 among sitting, standing, and walking every 10–15 minutes. AR 855–56. Ms. Antone opined  
 7 Plaintiff had postural, manipulative, and environmental restrictions. *See* AR 857–58. She opined  
 8 Plaintiff would be absent from work more than three times per month. AR 858. Dr. Macatuno  
 9 concurred with all of these opinions. *See* AR 861.

10 Dr. Macatuno completed a form in November 2018 stating Plaintiff's symptoms  
 11 remained unchanged. AR 870–71.

12 The ALJ found Dr. Macatuno's opinions not persuasive. AR 36. The ALJ reasoned Dr.  
 13 Macatuno did not provide an explanation for her concurrence with Ms. Antone's opinions. AR  
 14 35. The ALJ reasoned Dr. Macatuno and Ms. Antone's opinions were inconsistent with  
 15 Plaintiff's treatment records. AR 35–36. The ALJ reasoned Dr. Macatuno and Ms. Antone relied  
 16 too heavily on Plaintiff's self-reports. AR 36. The ALJ reasoned the providers' opinions were  
 17 inconsistent with Plaintiff's reported independence in her activities of daily living. *Id.*

18 The ALJ erred in rejecting Dr. Macatuno's opinions. Dr. Macatuno saw Plaintiff on many  
 19 occasions, and her own records could provide an explanation for her opinions. *See Garrison*, 759  
 20 F.3d at 1013 (holding the ALJ erred in rejecting treating doctor's opinions as unexplained while  
 21 ignored doctor's treatment records). Furthermore, as discussed above with respect to Plaintiff's  
 22 testimony, the ALJ erred in evaluating the medical evidence regarding Plaintiff's physical issues.  
 23 *See supra* Part IV.A.3, 5. Because the ALJ misevaluated that evidence, his finding that Dr.  
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1 Macatuno's opinions were unexplained and inconsistent with Plaintiff's treatment records was  
 2 not supported by substantial evidence.

3 The ALJ further erred in rejecting Dr. Macatuno's opinions as too heavily reliant on  
 4 Plaintiff's self-reports. As with the ALJ's evaluation of Dr. Hye's opinions, the ALJ's failure to  
 5 properly evaluate the medical evidence means the Court cannot determine whether the ALJ  
 6 reasonably found Dr. Macatuno relied on Plaintiff's self-reports instead of the medical evidence.

7 Finally, the ALJ erred in rejecting Dr. Macatuno's opinions as inconsistent with  
 8 Plaintiff's activities of daily living. The ALJ gave no explanation as to what activities  
 9 contradicted Dr. Macatuno's opinions. An ALJ errs when he rejects a medical opinion "with  
 10 boilerplate language that fails to offer a substantive basis for" the ALJ's conclusion. *Garrison*,  
 11 759 F.3d at 1012–13 (citing *Nguyen v. Chater*, 100 F.3d 1462, 1464 (9th Cir. 1996)). That  
 12 Plaintiff could live independently does not contradict Dr. Macatuno's opinions that Plaintiff had  
 13 exertional, postural, manipulative, and environmental limitations. The ALJ consequently erred in  
 14 rejecting Dr. Macatuno's opinions.

15 **C. Whether the ALJ Reasonably Evaluated Plaintiff's RFC**

16 Plaintiff argues the ALJ erred by failing to account for Plaintiff's alleged urinary  
 17 dysfunction in the RFC. *See* Dkt. 15, pp. 16–17. Because the Court has found the ALJ erred in  
 18 rejecting Plaintiff's symptom testimony, among other things, Plaintiff's argument succeeds. *See*  
 19 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1040–41 (9th Cir. 2007) (holding ALJ's RFC assessment  
 20 and step five determination were not supported by substantial evidence where RFC and  
 21 hypotheticals to vocational expert failed to include all of the claimant's impairments). The ALJ  
 22 erred in assessing Plaintiff's RFC.

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1                   **D. Scope of Remand**

2                   Plaintiff asks the Court to remand this matter for further administrative proceedings. *See*  
3 Dkt. 15, pp. 17–18. “The decision whether to remand a case for additional evidence, or simply  
4 to award benefits[,] is within the discretion of the court.” *Trevizo*, 871 F.3d at 682 (quoting  
5 *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987)). The Court agrees remand for further  
6 proceedings is the appropriate remedy.

7                   On remand, the ALJ shall reevaluate Plaintiff’s testimony, Dr. Hye’s opinions, and Dr.  
8 Macatuno’s opinions. The ALJ shall reassess Plaintiff’s RFC, and all other relevant steps of the  
9 disability evaluation. The ALJ shall conduct further proceedings as necessary to reevaluate the  
10 disability determination in light of this opinion.

11                   **V. CONCLUSION**

12                   Based on the foregoing reasons, the Court finds the ALJ improperly concluded Plaintiff  
13 was not disabled. Accordingly, Defendant’s decision to deny benefits is reversed and this matter  
14 is remanded for further administrative proceedings in accordance with the findings contained  
15 herein.

16                   Dated this 16th day of March, 2021.

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19                   David W. Christel  
20                   United States Magistrate Judge  
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